State of New Hampshire
OFFICE OF ATTORNEY-GENERAL

COPY in opinion

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July 13, 1955

Kenneth L. Cowan, Director
Division of Inheritance Taxes
State Tax Commission
State House
Concord, New Hampshire

Dear Sir:

Under the date of July 6, 1955, you have referred to an estate currently before you for the assessment of the inheritance tax and have inquired our opinion upon the deductibility of certain expenses claimed by the executors.

The estate under consideration is that of a non-resident who, at his death, had large holdings of real estate in New Hampshire. Primary administration was had in New York, the domicile of the decedent, and ancillary letters were sought and granted in this State. The latter step was taken, it is understood, simply with respect to the real estate located here. We are advised that the representatives of the estate deemed this action wise because they have believed that the device of administration will assist the devisees, when and if they wish to sell the real estate, in conveying an unobjectionable title to the same.

In connection with the tax to be assessed with respect to the local real estate, representatives of the estate have requested that you allow as a deduction from the value of such real estate the expenses of the ancillary administration. These expenses consist, in large part, of the costs of appraisal and of legal fees.

It appears that the estate as a whole is solvent and that the real property need not be sold to satisfy the debts of the decedent.

Upon these facts, and upon the additional representation which you make to the effect that for many years it has been the consistent practice of the administrators of R.L., c. 87 to refuse allowance of such expenses in similar cases, you ask whether the deductions requested by the local representatives of the estate should be allowed. We answer in the negative.

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The policy of the law with respect to deductions allowable in the assessment of the inheritance tax is found in R.L., c. 87, s. 37, as amended, as follows:

> "37. Executor's Services. In the computation of said taxes the state tax commission may deduct not exceeding five per cent from the value of the personal property, and of the real estate sold to pay debts, as an allowance on account of the personal services of the executor or administrator, but otherwise shall not be required to consider any payments on account of debts or expenses of administration which have not been allowed by the probate court having jurisdiction of said estate. Provided, that nothing hereunder shall be construed as limiting or determining the amount which may be allowed by the probate court in its discretion as an allowance for personal services of the executor or administrator."

It will be observed that the allowance of the executor is computed, insofar as real estate is concerned, only with respect to the real estate sold to pay the debts of the decedent, and not with respect to the entire quantum of the real property which the decedent owned at his death. This is thoroughly consistent with the concept that only real estate sold to pay debts enters into the course of administration. It is as entirely consistent to limit for the purposes of the inheritance tax the deduction for the expenses of administration with respect to real estate to such real estate as must be administered upon. We believe that section 37 imposes this limitation.

We hold, therefore, that there is no authority for the allowance of expenses incurred with respect to the real estate of a non-resident decedent not necessarily sold to pay his debts.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW/aml

cc: Council of State Governments 11/2/55

Commerce Clearing House 11/2/55